IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8994 of 2004

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBELAL ALIAS AMBUBHAI LAXMABHAI PATEL & 3 - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SAURIN A SHAH for Applicant(s) : 1 - 4.
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2007

ORAL JUDGMENT

1. By way of this application under section 482 of the Cr.P.C., the applicants have prayed to quash and set aside the FIR being CR No. II – 69 of 2004 registered at Valsad Rural Police Station

for the offence under sections 506(2) and 114 of the I.P.C.

2. An FIR is lodged against the applicants by the respondent No.2 herein at Valsad Rural Police Station for the offence under sections 506(2) and 114 of the I.P.C. At the outset, it is required to be noted that the present application has been filed under section 482 of the Cr.P.C. for quashing and setting aside the FIR and the investigation was in progress. It is the contention on behalf of the applicants that the applicants have not committed any offence as alleged under sections 506(2) and 114 of the I.P.C. and as there were earlier tenancy disputes between the parties, the impugned complaint has been filed with a view to harass the applicants. It is also further submitted that considering the averments in the application, no case is made out under sections 506(2) and 114 of the I.P.C. and therefore, it is requested to quash the FIR.

3. Shri M.R.Mengde, learned APP while opposing present application has submitted that the present application has been filed at the initial stage of investigation when the police was investigating the case. Relying upon the decision of the Hon'ble Supreme Court rendered in case of ***State of Orissa & Another V/s. Saroj Kumar Sahoo*** reported in **2005 (13) SCC 540** and in case of ***State of Karnataka & Another V/s. Pastor P. Raju*** reported in **AIR 2006 SC 2825**, it is submitted that it is the statutory duty of the police officer to investigate the case. It is submitted that after investigation, an appropriate report can be submitted by the Investigating Officer, however, at this stage, the Investigating Officer is not to be restrained in further investigating the case.

4. Heard the learned advocates appearing on behalf of the respective parties.

5. At the outset, it is to be noted that the applicants have approached this Court at the

stage of investigation and have challenged the FIR and have prayed to quash and set aside the FIR. It is the contention on behalf of the applicants that because of the earlier disputes between the parties, the impugned complaint/FIR has been filed with a malafide intention and therefore, the complaint is required to be quashed and set aside. The aforesaid aspect has been considered by the Hon'ble Supreme Court in case of ***Saroj kumar Sahoo*** (supra) and it is that at this stage, the allegation of malafides are not required to be considered. If, ultimately, after investigation is over, the Investigating Officer is of the opinion that no case is made out against the applicants, in that case, the Investigating Officer will submit an appropriate report before the Magistrate under section 169 of the Cr.P.C. and / or any other report and the Investigating Officer is not required to be restrained from further investigating the case. Under the circumstances and considering the averments in the complaint/FIR, the prayer of the applicants to quash the FIR at the initial

stage and to exercise the powers under section 482 of the Cr.P.C. is not required to be granted. Law on the point of quashing the FIR at the initial stage in exercise of powers under section 482 of the Cr.P.C. is already discussed by the Hon'ble Supreme Court in the aforesaid decisions.

6. For the reasons stated above, petition fails. Rule is discharged. Ad-interim relief, granted earlier, stands vacated forthwith.

(M.R.Shah, J.)

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